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09/759,543	01/12/2001	Walter Horburger	HF-54	1176

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/759,543

Applicant(s)

HORBURGER ET AL.

Examiner

Gail Verbitsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case, the term "highly porous" in claim 5 is a relative term which renders the claim indefinite. The term "highly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goss et al. (U.S. 5749152) [hereinafter Goss] in view of Patten (U.S. 4099961).

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Goss discloses in Fig. 2 a spirit level comprising a bubble level (vial) 10, a bubble 46, a recess and a housing ( level body) 54.

Goss does not explicitly disclose a foam metal material to make the level body.

Patten teaches how to make a foam metal material and states that articles made of this material are light weighted, have a high damping coefficient (durable), and high stiffness-to-density ratio, therefore a material of a predetermined density can be made.

Therefore, it would have been obvious to one of ordinary skill to make the level/ article disclosed by Goss of a foamed metal, as taught by Patten, so as to have a light weighted, durable material so as to provide a user with a light weighted level, in order to allow the user to easily hold it and set it to the surface of interest.

5. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goss in view Brungs (U.S.6332907).

Goss discloses in Fig. 2 a spirit level comprising a bubble level (vial) 10, a bubble 46, a recess and a housing ( level body) 54.

Goss does not explicitly disclose a foam metal material to make the level body.

Brungs teaches how to make a foam aluminum matrix and states that articles made of this material have low weight.

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Therefore, it would have been obvious to one of ordinary skill to make the level/ article disclosed by Goss of a foamed aluminum, as taught by Brungs, so as to have a light weighted level, in order to allow the user to easily hold it and set it to the surface of interest.

6. Claims 1-3, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goss in view of Niebylski et al. (U.S. 3873392) [hereinafter Niebylski].

Goss discloses in Fig. 2 a spirit level comprising a bubble level (vial) 10, a bubble 46, a recess and a housing (level body) 54.

Goss does not explicitly disclose a foam aluminum material to make the level body.

Niebylski suggests to make a coated foam (highly porous) aluminum article. Niebylski states that this material is durable (can withstand high impaction energy).

For claim 3: the article can be coated with a plastic material. It is inherent that the foam material has less density (more porous/ highly porous) than the plastic material.

For claim 5: the article can be coated by adhesion of a metal foil. It is inherent that the foam material has less density (more porous/ highly porous) than the metal foil.

Therefore, it would have been obvious to one of ordinary skill to make the level/ article, disclosed by Goss, of a coated foam aluminum, as taught by Niebylski, so as to have a light weighted level made of a porous durable material being protected with a less porous (dense) material from possible contaminations, in order to provide a durable light weighted level which is easy to hold and can be used in a harsh environment.

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7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goss and Patten as applied to claim 1 above, and further in view of Richardson et al. (U.S. 5607181) [hereinafter Richardson].

Goss and Patten disclose the device as stated above in paragraph 3.

They do not disclose a synthetic non/ (less) porous coating, as stated in claims 3, 5.

Richardson teaches that a porous metal structure can be covered with a non-porous impermeable plastic (synthetic) coating (col. 5, lines 41-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the body of the device, disclosed by Goss and Patten, with a non-porous plastic impermeable coating, as taught by Richardson, so as to make it less susceptible to then environment the level is positioned and to protect the porous inside from possible contamination and moisture, in order to maintain the required accuracy and longevity of the device.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goss and Patten as applied to claim 1 above, and further in view of Provi (U.S. 3889353).

Goss and Patten disclose the device as stated above in paragraph 3.

They do not disclose recesses (plurality) in the level body.

Provi discloses in Fig. 1 two recesses for vials (bubbles) 48.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Goss and Patten, so as to have two (plurality) recesses for bubbles, as taught by Provi, in order to provide the user with a plurality of bubbles and thus, more accurate level indication.

***Response to Arguments***

9. Applicant's arguments presented in paper # 15 (Supplemental Appeal Brief) have been hereby acknowledged. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices.

11. Any inquiry concerning this communication should be directed to Examiner Verbitsky who can be reached at (703) 306-5473, Monday through Friday, 7:30 to 4:00 ET.

Any inquiry of general nature should be directed to the Group receptionist whose telephone number is (703) 308-0956.

GKV

August 05, 2003

  
Gail Verbitsky

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*Patent Examiner, TC 2800*